IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4687 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASTAJI SOMAJI SARGADA BROTHEROF DETENU HARISH SOMAJI

Versus

COMMISSIONER OF POLICE

Appearance:

MS MITA S PANCHAL for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

#. Heard Mr.Mita S. Panchal, learned advocate for the petitioner and Mr.A. J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. One Vastaji Somaji Sargada has filed the present petition under Article 226 of the Constitution of India to challenge the detention order dated 23-4-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the detenu - the brother of the petitioner Harish Somaji Sargada in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that in all 6 prohibition cases were registered against the detenu at Kagadapith police station in between 21-11-97 to 22-4-99. That in each case, the country made liquor was seized from the possession of the detenu. That first four cases are pending for trial while the last two cases are pending for investigation.

Over and above that two witnesses on assurance of their anonymity have given statement in respect to bootlegging activities of the detenu and have narrated the alleged incidents dated 12-4-1999 and 15-4-1999 respectively. That on the basis of the said material, the respondent No.1 - the detaining authority has come to the conclusion that the detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the detenu from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted at bar on behalf of the detenu that the detenu was released on bail in 5 cases out of 6 cases registered against him. That so far as the case registered vide C.R. No : 5224 of 1999 dated 22-4-99 is concerned, the detenu was in police custody. That when the impugned order was passed, the detenu was in police custody and yet the detaining authority has failed to consider the less drastic remedy of claiming of cancellation of bail under Section 437 (5) of CrPC, though available. That the said fact discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that

non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detaining authority was aware of the fact that the detenu was in police custody in respect to criminal case vide C.R. No : 5224 of 1999 dated 22-4-99. However, the detaining authority has shown apprehension that on completion of the remand period, the detenu would be produced before the Court and he would apply for bail and having got himself released on bail, he is likely to continue is anti social activities. This observation shows that the detaining authority has passed the order on apprehension rather than the material produced before him, which amounts to non application of mind vitiating the subjective satisfaction.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 23-4-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the detenu is hereby quashed and set aside. The detenu - Harish Somaji Sargada is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 18-1-2000 [A.K.Trivedi, J.]

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